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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PRATUM FARM, LLC,

Plaintiff,

vs.

**UNITED STATES DEPARTMENT OF
AGRICULTURE,**

Defendant.

Case No.: 6:23-cv-01525-AA

**PLAINTIFF'S MOTION TO STRIKE OR,
IN THE ALTERNATIVE, MOTION FOR
LEAVE TO FILE RESPONSE TO
DEFENDANT'S NOTICE OF
SUPPLEMENTAL AUTHORITY**

In compliance with LR 7-1, via signature of counsel below, Plaintiff certifies that the parties made a good faith effort to resolve the dispute raised by this motion. The Defendant “does not consent to the motion to strike, but we have no objection to Plaintiff filing a response to the government’s statement of supplemental authority, or a statement of supplemental authority of its own, which we believe Plaintiff has every right to do without seeking Defendant’s consent.”

MOTION

Plaintiff, Pratum Farm, LLC (“Pratum Farm”), respectfully brings this motion requesting an Order that strikes Defendant United States Department of Agriculture’s (“USDA”) Notice of Supplemental Authority filed in this Court on July 15, 2024 (ECF 32). In the alternative, Pratum Farm requests an Order granting Pratum Farm leave to file a memorandum, not to exceed five (5) pages in length, that responds to USDA arguments in the Notice.

LEGAL MEMORANDUM

Supplementing earlier USDA briefs relating to the parties’ respective motions for summary judgment, the USDA unilaterally filed an unsolicited memorandum entitled “Notice of Supplemental Authority” (the “Notice”) (ECF 32) relating to the Supreme Court’s recent decisions in *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 144 S. Ct. 2440, (July 1, 2024); and *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (June 28, 2024).

Although not mentioned in the Notice, the Oregon Rules of Professional Conduct, RPC 3.3(a), requires disclosure of these cases because they represent controlling authority that is directly adverse to material legal arguments made by the USDA in its briefs. However, in addition to notifying the Court of these decisions, the Notice also contains significant legal argument and, therefore, is more a supplemental memorandum than a “notice.”

Neither the Federal Rules of Civil Procedure nor the Local Rules of this Court provide for the filing of supplemental authorities. Moreover, LR 7-1(e) and LR 7-1(f) specifically prohibit supplemental memoranda or further briefing following close of the response and reply time periods for motions, unless “directed by the Court.”

Rather than unilaterally file the Notice, the USDA should have brought a motion requesting the Court’s leave to file after following the attorney meet and confer requirements of LR 7-1(a).

Should the Court, in its discretion, decide to not strike the USDA Notice, Pratum Farm respectfully requests an opportunity to respond to the Notice, as per the above Motion, because the USDA mischaracterizes these cases as they relate to the USDA's legal position. As one example, the USDA repetitively argued in earlier briefs that this Court is required to defer to the USDA's legal interpretation of federal statutes. Those arguments are now clearly overruled by the Supreme Court in *Loper Bright*.

Dated: July 30, 2024.

Respectfully submitted,

Pratum Farm, LLC

/s/ Bruce A. Kaser

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CERTIFICATE OF SERVICE

I certify that on July 30, 2024, I served or caused to be served a true and complete copy of the foregoing **PLAINTIFF'S MOTION TO STRIKE OR, IN THE ALTERNATIVE, MOTION FOR LEAVE TO RESPOND TO DEFENDANT'S NOTICE OF SUPPLEMENTAL AUTHORITY** on the party or parties listed below as follows:

- Via CM / ECF Filing
- Via First Class Mail, Postage Prepaid
- Via Email
- Via Personal Delivery
- Via Facsimile

Anna Deffebach
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Of Attorneys for Defendant

/s/ Bruce A. Kaser

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